
HM Revenue and Customs

Modernising Powers, Deterrents and Safeguards

The Review's Work Programme

November 2008



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Executive Summary

Background

HM Revenue and Customs (HMRC) was created by the Commissioners for Revenue and Customs Act (CRCA) 2005. This 'ring-fenced' the powers of each former Department and carried them forward into the new organisation. Alignment and modernisation provides an opportunity to bring powers, deterrents and safeguards up to date, to address areas that are not working well, to promote behaviours that support compliance, and to look for opportunities to reduce the extra costs to taxpayers and HMRC that arise from different regimes affecting basically the same activities.

The aim: to support those who seek to comply

The O'Donnell Report recognised that the case for organisational change rested on potential improvements in customer service, effectiveness and efficiency. It recommended integration of the predecessor departments, structuring around HMRC's customers, better focus on the tax gap, improved efficiency and a new culture and identity for the department. Key to the Review's work has been improvement in the understanding of those behaviours that determine whether tax is paid or claimed correctly. To respond to these different behaviours the aim of the Review, as developed through early consultation, is for **HMRC to support those who seek to comply but come down hard on those who seek an unfair advantage through non-compliance.**

Design principles applied by the Review

The first stage of the overall project and, indeed, of any individual part of it, has been to understand the principles that should underpin the design of new powers and safeguards. These design principles play a key role in assessing the effectiveness of both the current regimes and proposals for change (see 3.2 below).

The importance of effective Safeguards

Safeguards have been a vital strand of the Review's work from its earliest days: in tax law, in Codes of Practice and guidance, in non-tax legislation such as the Human Rights Act and in safeguards created by HMRC such as complaints procedures and access to redress. In determining which safeguards are needed considerations of **proportionality** have been paramount. As well as needing to act in ways that are proportionate to risk, HMRC officers must also act **reasonably** in the way that they go about checking those risks. **Clarity** is also important. Taxpayers need to know what they must do and the consequences if they fail to meet their obligations. In addition shared guidance promotes greater **consistency** not least in the way that HMRC staff interact with taxpayers.

Examples of new safeguards in law include:

- Schedule 24 Finance Act 2007 provides for penalties for incorrect returns which, unlike the legislation it supersedes, sets out in law much greater certainty, through proportionate and stepped penalty levels that depend on the behaviour involved, and criteria set in statute that determine how penalties can be reduced. It also includes the novel and greatly welcomed concept of suspended penalties.

- Turning to compliance checks, for VAT in future, unless there is agreement with the taxpayer, an officer must give at least 7 days' notice of an inspection or have it authorised in advance. The new safeguards mean that other documents such as private bank statements can only be formally requested using a written information notice, which will carry a right of appeal unless it has been authorised by the independent Tribunal. These powers do not include a power to enter or inspect any part of the premises that is used solely as a dwelling.

The Review's methodology

The Review consults on parts of its work as they are developed, feeding the results into successive Finance Bills. This has enabled priority to be given to key areas and allows the Review to focus on broadly discrete regimes thus enabling the consultation process to be taken forward at a pace that is more manageable for stakeholders. It takes around two years to progress subjects from first thoughts to legislation. The Review begins by comparing the current position with the aims of the particular regime and the design principles and by researching impacts. Options are shared with the Consultative Committee. Consultation follows with formal documents, face to face meetings and workshops. The results are brought together to construct proposals for further consultation along with draft clauses, illustrative guidance and impact assessments, all of which are subject to further consultation.

The Review's Work Programme: Criminal Investigation

The criminal investigation strand of work was set up to align criminal investigation powers across HMRC in 2007, and extend intrusive surveillance powers to direct taxes in the Serious Crime Act which received Royal Assent on 30th October 2007. Existing powers were insufficient to combat serious organised crime and identity theft.

Penalties

The penalties strand of work continues to align, where it makes sense to do so, and modernise the penalties inherited by HMRC. Penalties for incorrect tax returns were legislated in Finance Act 2007 and Finance Act 2008 and penalties for failures to notify a taxable activity in Finance Act 2008. Penalties for late filing and late payment have been subject to recent consultation and work has yet to start on penalties for regulatory failures. The work has concentrated on the linkage between penalties and behaviours, the need for effective safeguards and incentives to return to compliance such as substantial penalty reductions for disclosure and the innovative regime for suspended penalties.

Compliance checks

Changes in Finance Act 2008 created a framework of aligned powers to check taxpayers' affairs across IT (including PAYE), CGT, CT, and VAT. The previous checking powers are to be repealed and replaced with aligned powers, supported by increased safeguards, Codes of Practice and guidance. They allow inspection of statutory records and business premises and assets and seeking of information from taxpayers and third parties through written notices. Finance Act 2008 also aligned rules for keeping records and time limits for claims and assessments across taxes. Extension of this framework to other taxes and duties is planned, to the extent it makes sense to do so.

A number of information and inspection powers and their related safeguards remain to be considered: to gather information from closely connected parties, whose obligations affect others taxpayers; to obtain information about parties whose identities may not otherwise be known to HMRC; and to obtain bulk information for risk analysis. The creation of new aligned powers also creates the potential for repeal of sections no longer needed.

Payment, repayment and debt

Proposals in Finance Act 2008 enabled HMRC to accept payment by credit card, to align and modernise HMRC powers to seize goods to satisfy tax debt, to take court action for debts and to set repayments against what HMRC is owed. HMRC is currently considering further measures to provide payment instalment schemes to help taxpayers budget for their tax payments and more generally looking at ways in which its debt collection can be made more effective.

HMRC Charter

Respondents to the Review's consultations have consistently called for a Charter for HMRC's customers. In January of this year the then Financial Secretary asked HMRC to begin work with stakeholders on the preparation of a Charter. Since then HMRC has undertaken a very extensive consultation exercise. Further consultation early in the New Year will consider the wording of the Charter. The current expectation is that the Charter will be launched in the first half of 2009.

Implementation

Getting the legislation right is crucial, but equally so are the steps HMRC take to ensure that the new powers, deterrents and safeguards are implemented effectively and deliver real change. Work is nearly completed to train those in HMRC's criminal investigation directorate to use the new powers in Finance Act 2007. Specialist teams have been set up to implement the penalties' and compliance checks' changes, including making guidance and e-learning packages available on the HMRC website. HMRC has also initiated specialist training to ensure that an effective customer focused approach informs the use of the new powers. Looking to the longer term, the Government has announced to-day an Implementation Oversight Forum that will be made up from external stakeholders and relevant HMRC directors and will report to ministers. It is envisaged that this forum will start work before the first of the new civil powers come into effect on 1 April 2009.

More information about the Review of Powers can be found at

<http://www.hmrc.gov.uk/about/powers-appeal.htm>.

Past and current consultation documents and responses to consultation can be found at

<http://www.hmrc.gov.uk/consultations/index.htm>.

The contact e-mail address for the Review of HMRC's powers, deterrents and safeguards is powers.review-of-hmrc@hmrc.gsi.gov.uk and the postal address is HMRC Review of Powers, Room 1/72, 100 Parliament Street, London SW1A 2BQ.

Chapter 1: Background

- 1.1 The creation of HMRC out of the former HM Customs and Excise and Inland Revenue Departments provided significant opportunities to “deliver the benefits of customer service, and of effective and efficient operations, to the country”¹. Getting the right framework of powers, deterrents and safeguards – the law and practice that will underpin HMRC’s relationship with those it deals with – is a key element in securing these improvements.
- 1.2 The new Department was created by the Commissioners for Revenue and Customs Act (CRCA) 2005, which ‘ring-fenced’ the powers of each former Department and carried them forward into the new HMRC. Making no changes at that time helped to ensure that business as usual, and a high standard of service, were maintained. It also allowed a breathing space to design and consult on the powers, deterrents and safeguards appropriate for a modern integrated tax administration. In many areas HMRC inherited different ways – often several different ways - for addressing similar issues. These differences often stemmed from historical accident rather than from any structural requirement.
- 1.3 The Review of Powers, Deterrents and Safeguards (“the Review”) was announced as part of the CRCA proceedings. Ministers also appointed a Consultative Committee to consider options for future powers, deterrents and safeguards. Membership of the Committee² is broad-based to reflect the perspective of the wider community including tax credit claimants, low income groups, businesses of all sizes, employees and the tax-related professions.
- 1.4 The benefits projected by the O’Donnell Report, which recommended merger, can only be achieved through alignment of powers, where it makes sense to do so. The greater synergies that will come from cross-tax working require different parts of HMRC’s operations to work together, but the scope for doing so is severely limited while powers remain ring-fenced and work in different ways. Alignment and modernisation provide an opportunity to bring powers, deterrents and safeguards up to date, to address areas that are not working well, to promote behaviours that support compliance, and to look for opportunities to reduce the extra costs to taxpayers and HMRC that arise from different regimes affecting basically the same activities.

¹ Chancellor of the Exchequer’s Foreword to Financing Britain’s Future: Review of the Revenue Departments, led by Gus O’Donnell March 2004. <http://www.hm-treasury.gov.uk/3127.htm>

² Details about the Review, including the Consultative Committee can be found at <http://www.hmrc.gov.uk/about/powers-appeal.htm>.

Chapter 2: The aim: to support those who seek to comply

- 2.1 The O'Donnell Report recognised that the case for organisational change rested on potential improvements in customer service, effectiveness and efficiency. It made clear recommendations about what was needed if merger of Customs and Excise and the Inland Revenue was to be successful and of benefit to the country.

The relevant recommendations were:

- integration of the predecessor departments;
- structuring the new department as far as possible around its customers;
- better understanding of and focus on reducing the tax gap;
- generation of significant cost savings through improved efficiency; and
- creation of a new culture and identity for the department .

- 2.2 HMRC anticipates that successful delivery of the Review's legislative changes and their implementation will play a vital part in securing these recommendations.
- 2.3 Key to the Review's work has been improvement in the understanding of those behaviours that determine whether tax is paid or claimed correctly. The majority of people in the UK want to pay the tax they owe and claim only what they are due because they believe that is right and they are aware of the link between tax and public services. Where people do get their tax or claim wrong it is often because of errors made despite trying to get it right.
- 2.4 As the OECD has reported: "Taxpayers are more likely to increase voluntary compliance when they believe the revenue authority acts in a way that is fair and reasonable"³. Part of being perceived as fair is being able to reassure those who do take care to pay or claim the right amount that HMRC undertakes sufficient policing of those who do not. This responds to the concerns of taxpayers generally, and businesses especially, that tax evasion disadvantages those who do pay the right tax on time.
- 2.5 To respond to these different behaviours the aim of the Review, as developed through early consultation, is for **HMRC to support those who seek to comply but come down hard on those who seek an unfair advantage through non-compliance.**

³ OECD Guidance note: *Compliance Risk Management: Managing and Improving Tax Compliance* (2004)

2.6 The Review is pursuing this aim through the modernisation and, where it makes sense to do so, the alignment of HMRC's powers, deterrents and safeguards. A department that has been **integrated** will have aligned powers, deterrents and safeguards across taxes and duties where it makes sense to do so. This should have the following benefits:

- the creation of a broadly consistent framework means that taxpayers will be faced with only one set of rules. This will be simpler and will promote greater understanding of safeguards, obligations and the consequences of not doing what they should do. Consistency will mean that taxpayers can expect broadly the same HMRC response to similar situations;
- the ability to work across tax and duty regimes will enable HMRC to deal with any checks that need to be made quickly and effectively, including, where appropriate, cutting out multiple visits or requests for information. This will save time and costs for taxpayers and HMRC;
- being able to work across taxes will improve risk assessment thereby enabling HMRC to target the more serious cases and reduce the level of checking on those who have got their tax right.

2.7 By **structuring its work around its customers** HMRC will tailor support and checks more clearly around what is required for individual taxpayers:

- HMRC will make it easier for taxpayers to be aware of what they need to do, including when they should seek advice, and its officers will help them to get it right in future when they have made a mistake;
- tailoring any check to what is needed and, in particular, not being tied to a rigid structure intended to fit every case, will speed up most of the checks that need to be made, thus reducing costs for taxpayers and HMRC;
- HMRC will ensure that those whose affairs are checked or investigated have sufficient robust and readily accessible safeguards and are made aware of them;
- customers should be made aware of what a check involves;
- HMRC will provide more flexible and modern payment methods that are easier to use and will help taxpayers to pay on time and will publicise the availability of realistic time to pay arrangements when taxpayers face temporary financial difficulties;
- as well as dealing with non-compliance HMRC officers will encourage a return to compliance by making the benefits of disclosure clear and offering suspended penalties in appropriate cases;

- where there has been an underpayment or overclaim HMRC officers will seek to understand the underlying taxpayer behaviour to assess whether or not this results from a mistake, failure to take reasonable care or deliberate understatement.

2.8 More effective powers, deterrents and safeguards will enable HMRC to **reduce the tax gap** which will mean that HMRC can:

- respond to taxpayers' concerns that the non-compliant obtain a competitive advantage because it has sufficient information and inspection powers to enable effective checking to take place;
- ensure that those whose affairs are checked or investigated have sufficient robust, readily available and understandable safeguards;
- ensure that its powers are used reasonably and proportionately to the tax apparently at risk;
- undertake risk analysis, based on better information and a more complete view of the taxpayer's affairs, that will enable HMRC to target more serious non-compliance;
- charge penalties that are an effective and proportionate deterrent but also incentivise a return to compliance; and
- ensure that tax and, where appropriate, interest and penalties is charged and collected.

2.9 **Improving efficiency** through tailoring the intervention to the circumstances of the particular customer and using a range of interventions that are proportionate to the risk involved will help HMRC to:

- reduce costs, intrusion and stress for taxpayers; and
- reduce its own cost base.

2.10 **A new culture** will mean that HMRC officers:

- make it easier for taxpayers to know what they have to do;
- ensure that taxpayers are made aware of their rights and safeguards;
- understand different behaviours and treat them differently and appropriately, for instance, people do make mistakes despite taking reasonable care;
- understand what is reasonable for any particular taxpayer or claimant to do to get their tax or claim right;
- recognise the stress that compliance checks can cause; and
- have a better commercial awareness.

Chapter 3: Design principles applied by the Review

- 3.1 The greater synergies that will come from cross-tax working require different parts of HMRC's operations to work together, but the scope for doing so is severely limited while powers are ring-fenced. There has therefore been a need to balance a comprehensive consideration of what is needed with the requirement for HMRC to be operationally effective.
- 3.2 To balance the fact that the big picture would only emerge piecemeal, the first stage of the overall project and, indeed, of any individual part of it, has been to understand the principles that should underpin the design of new powers and safeguards. These design principles play a key role in assessing the effectiveness of both the current regimes and proposals for change.

Powers and the statutory obligations they impose need to be

- set within a clear statutory framework,
- easily understood – by taxpayers, their agents and HMRC staff,
- straightforward to comply with,
- proportionate to what HMRC needs to discharge its responsibilities or to protect the Exchequer from the risk assessed,
- used consistently,
- effective in providing the information HMRC needs to assess risk, and
- effective in discovering and dealing with non-compliance and in helping people to return to compliance.

Safeguards for citizens and businesses must be

- clear,
- publicised,
- accessible,
- effective,
- responsive to the nature and purpose of particular powers and sanctions, and
- conformant with Human Rights and other relevant non-tax legislation.

Sanctions for non-compliance must be

- set in statute,
- clear and publicised,
- proportionate to the offence,
- used consistently, and
- effective in deterring non-compliance and returning the non-compliant to compliance.

Chapter 4: The importance of effective Safeguards

- 4.1 Safeguards have been a vital strand of the Review's work from its earliest days and this is demonstrated by what has been achieved to date. When the Finance Act 2007 penalty changes are implemented there will be a framework in statute that barely existed before. The information powers' provisions in Schedule 36 of Finance Act 2008 include thirty-seven separate safeguards. Throughout the process of getting to that point in open discussions, consultations and workshops HMRC listened to the views of respondents and accepted some twenty changes to the developing proposals.
- 4.2 First, safeguards in existing or new legislation, as supplemented by Codes of Practice and guidance, were checked against the design criteria. What the Review found was a broadly different approach between the two predecessor departments. The Inland Revenue had tended to put more safeguards in the form of appeal rights and authorisation requirements in legislation. Customs and Excise had an overall requirement to act reasonably and generally operated within a narrower legislative scope. As a result, while work to date has modernised legislative safeguards for the direct taxes, there has been greater clarification about what HMRC officers can do when acting within the indirect taxes.
- 4.3 The second main activity was to track the safeguards that apply to HMRC through non-tax legislation such as the Human Rights Act and the safeguards which HMRC has created itself, such as complaints procedures and access to redress. This work was subject to consultation⁴ in 2007 and included a very extensive catalogue of these safeguards, which HMRC considered publishing more formally. Respondents were, however, lukewarm about the idea. Work on safeguards has been taken forward in later consultations on specific areas, for example in the responses to consultation on compliance checks issued on 10 January 2008.
- 4.4 In determining what safeguards are needed considerations of **proportionality** have been paramount. HMRC's actions should be proportionate to the perceived risk which must itself relate to the taxpayer's apparent behaviour. Much of the Review's subsequent work has therefore been intended to create greater flexibility both in the way that HMRC checks risks and, where appropriate, imposes sanctions.
- 4.5 For instance, where HMRC has needed information about a non-Self Assessment taxpayer's tax position, the normal practice has been to issue a tax return. However, many such taxpayers may never have received a return before, or at least not for a very long time. Some will seek advice from HMRC, others will engage a tax adviser, with attendant costs, but many simply ignore the return and find themselves incurring a penalty. Under the new regime HMRC officers will be able

⁴ Modernising powers, deterrents and safeguards: Safeguards for taxpayers, published 17 May 2007.

to contact the taxpayer directly, perhaps over the telephone, and sort out the matter, generally without the need to issue a tax return.

- 4.6 The new penalty framework, introduced in Schedule 24 of Finance Act 2007, recognises explicitly that HMRC's response to submitting an incorrect tax return must be proportionate to the taxpayer's behaviour. It differentiates mistakes made despite taking reasonable care (which are not penalised), failures to take reasonable care (which may be) and deliberate understatements (which will be). The framework recognises that what constitutes reasonable care varies from person to person.
- 4.7 The thinking underlying this has been taken further and there is a much greater emphasis on encouraging taxpayers to return to compliance. Not only are there very substantial reductions in penalties for prompted and unprompted disclosure but Schedule 24 has introduced the novel concept of suspended penalties. These are intended, in appropriate cases, to turn a penalty for failing to take reasonable care into an incentive to get it right in future.
- 4.8 As well as needing to act in ways that are proportionate to risk, HMRC officers must also act **reasonably** in the way that they go about checking those risks. That has been introduced into Schedule 36 of Finance Act 2008 through requirements on HMRC officers to be reasonable and act reasonably. The words "reasonable" or "reasonably" appear 17 times in the Schedule.
- 4.9 There is now much greater clarity in statute about how visits are arranged and what HMRC officers can do when visiting business premises. Previously there was almost nothing about this in statute for VAT or PAYE inspections. For instance, whilst it might be technically argued that part of a home is used as business premises if some of the business records are kept there, would it be "reasonable" for an HMRC officer to visit someone's home on that basis? Draft Code of Practice B in the consultation document issued on 10 January 2008 answered that question: "if you simply keep some of your business records at home we will not visit your home, unless you invite us to."
- 4.10 Under existing law any HMRC officer undertaking a VAT check can call upon anyone involved in a supply chain at any time and at any place. In future they must give at least 7 days' notice of an inspection or have it authorised in advance. Moreover inspection of documents linked in some way to the supply of goods and services, without appeal, is now limited to just statutory records. The new powers mean that other documents such as private bank statements can only be formally requested using a written information notice, which will carry a right of appeal unless it has been authorised by the independent Tribunal. These powers do not include a power to enter or inspect any part of the premises that is used solely as a dwelling.
- 4.11 If a taxpayer believes an HMRC officer has not acted reasonably he or

she may complain. Codes of Practice will tell them how to do that. And, were a case to go to tribunal, HMRC's understanding is that operational guidance would be taken into account in determining whether an HMRC officer had acted reasonably.

4.12 **Clarity** is also an important safeguard. Taxpayers need to know what they must do and the consequences if they fail to meet their obligations. Unlike the legislation it supersedes, Schedule 24 Finance Act 2007, which sets out the new regime for penalties for incorrect tax returns, provides much greater certainty by clearly setting out in law:

- proportionate and stepped penalty levels which depend on the behaviour involved; and
- criteria set in statute that determine how penalties can be reduced.

Not only does this provide greater clarity but it will lead to greater consistency because the room for discretion is significantly reduced.

4.13 In a few areas respondents to consultations have suggested additional safeguards that have not been introduced. An example is the call for an appeal against HMRC's right to see statutory records. It is difficult to see what successful grounds of appeal would be against a request to see documents that by law must be kept. HMRC's new approach is in line with other OECD countries and indeed with many public and professional authorities in the UK. Records can be the bedrock on which an accurate return is made or they can be the shifting sands on which an inaccurate one rests. The NAO have recognised this and recommended earlier this year that HMRC do more to check records.

4.14 However, the taxpayer is not without protection. As noted above, HMRC officers are required to act reasonably. And HMRC would not expect a taxpayer to do more than is necessary to either complete an accurate return or have an agent prepare the figures. For instance, if someone with simple affairs retains all their invoices and receipts in the proverbial shoe box that will generally be sufficient.

4.15 Legislation cannot cover every conceivable scenario. Other forms of safeguard can be flexible and a protection for the taxpayer. As with last year's penalties' clauses, there will be full and open consultation on guidance and training. This approach has been applauded and will help to promote greater **consistency**.

4.16 HMRC have already started work to produce guidance on the Finance Act 2008 legislation. HMRC will publish technical guidance on compliance checks, some of which is already being reviewed by an external readership panel. This will be followed by operational guidance, again subject to external review. Working with the professions on the development of guidance and sharing it thereafter is itself a safeguard. Once HMRC and advisers are happy to work to the same script it should be easier to agree how cases can be taken

forward.

- 4.17 HMRC's approach is also intended to create consistency not just in terms of common technical or operational guidance but also in the ways in which its staff act and react in their dealings with taxpayers. The focus of the new powers will be based much more on an understanding of behaviours. Training will seek to ensure that compliance checks are carried out professionally and with proper regard for the taxpayer. Part 7 describes the work which HMRC is already doing to ensure that the new powers will be used consistently, properly and with staff understanding what customer focus means in the compliance context and what is expected from them.
- 4.18 In addition to safeguards which are specific to the Review, HMRC is engaged in extensive consultation on a Charter that will be the keystone for the overall framework of HMRC safeguards. This work is closely linked to what the Review is doing but is separate because of its very much wider purview. (See 6.33 below.)

Chapter 5: The Review's methodology

- 5.1 The Review consults on parts of its work as they are developed, feeding the results into successive Finance Bills. This has enabled priority to be given to key areas where early alignment has been needed. It also allows the Review to focus on broadly discrete regimes thus enabling the consultation process to be taken forward at a pace that is more manageable for stakeholders. HMRC would like to take this opportunity to acknowledge and thank stakeholders for the time and commitment that they have very regularly given to the Review.
- 5.2 Typically it takes around two years for each subject to progress from first thoughts to legislation. The Review team start by evaluating current law and practice to identify problem areas and the potential for alignment. Working groups from across every relevant part of HMRC advise and help. The Review analyses the current position, compares it with the aims of the particular regime and the design principles and undertakes research on both current impacts and the likely impacts of various options. During this period emerging thoughts are shared with the Consultative Committee whose advice and help has been invaluable throughout the Review to date.
- 5.3 Public consultation is the biggest and most important part of the process. The Review uses a variety of methods:
- formal consultation documents are issued for new areas of work and examine existing regimes and their pros and cons and float high level options for change;
 - all consultations are supplemented by numerous face to face meetings with interested parties;
 - following consultation, workshops are held with stakeholder groups to understand the detail and work together on problem areas;
 - members of the Review team and the implementation teams take up opportunities to attend external conferences to describe and debate their ideas and to meet specialist stakeholder groups representing businesses, the professions and the financially vulnerable;
 - all the knowledge gained is brought together to construct proposals for further consultation along with draft clauses, illustrative guidance and impact assessments; and
 - once material, as revised following consultation, finally goes into a Finance Bill the process continues through further work with internal and external stakeholders on guidance, codes of practice and training.

- 5.4 The extent and depth of consultation and the preparedness to listen to others' views has been widely praised by those involved. It provides stakeholders with the opportunity to make suggestions at each stage. There is no doubt that the resulting legislation has been much enhanced by this continuous constructive dialogue.

Chapter 6: The Review's Work Programme

- 6.1 The following sections describe the projects that are part of the Review.
- 6.2 Each area represents a journey that involves working with colleagues in HMRC and with external stakeholders to get the policy right: effective and proportionate powers for HMRC and effective safeguards for taxpayers. Every consultation has resulted in major changes to the early options – changes that have been made right through the process from exposure of options through to exposure of draft clauses. As this is an iterative process the extent of the changes made and the ongoing involvement of representative bodies is sometimes not obvious.
- 6.3 Consultation has been announced today on compliance checks, penalties for late filing and late payment and payments, repayments and debt alongside a closely linked HMRC consultation on harmonisation of interest. A key theme of this package of work is to help taxpayers to pay on time. Payment Installment Schemes will give taxpayers flexibility to pay their future tax bills over time rather than in lump sums. Where they have difficulty in paying bills HMRC will negotiate time to pay arrangements. One of the proposals generated by the work on penalties is that when a taxpayer enters such an arrangement, penalties would be suspended and waived once the outstanding tax had been paid.
- 6.4 As well as encouraging those who have difficulty in paying to make early contact, HMRC also has a duty to the vast majority of taxpayers who pay their tax on time or very close to the due dates to pursue those who seek a competitive advantage by delaying payment for as long as possible or not paying at all. The other measures in the payments, repayments and debt package seek to improve HMRC's operational effectiveness in managing debt to enable resources to be put towards providing help for those who need it.

Criminal Investigation Powers

- 6.5 The criminal investigation strand of work was set up to:
- align criminal investigation powers across HMRC in Finance Act 2007; and
 - extend intrusive surveillance powers to direct taxes in the Serious Crime Act which received Royal Assent on 30 October 2007.
- 6.6 Early alignment of HMRC's criminal investigation powers was a priority for the Review because bringing the predecessor departments together had created some situations that were unsatisfactory for HMRC and taxpayers. It also created potential for mistakes with all the consequences they could have once proceedings had been initiated. The worst example involved search powers: cross tax criminal

investigation required separate warrants and separate search teams.

- 6.7 The legislation in Finance Act 2007 broadly aligned criminal investigation powers and safeguards for direct and indirect tax within England, Wales and Northern Ireland around the relevant parts of the Police and Criminal Evidence Act. It also introduced a criminal investigation regime tailored to Scots' law but intended to deliver the same outcomes. The key principle underpinning this work, that was supported generally throughout the consultation process, was that tax crime is a crime like any other and should, where possible, be investigated in the same way as other crimes of similar seriousness.
- 6.8 Criminal Investigation will be reserved for cases where HMRC needs to send a strong deterrent message or where the conduct involved is such that only a criminal sanction is appropriate. Prosecution of HMRC cases is undertaken by the separate Revenue and Customs Prosecution Office. These powers came into force within England Wales and Northern Ireland on 1 December 2007.
- 6.9 Attacks by organised crime not only on the Tax Credits system but, increasingly, the Self Assessment system required an increase in the powers for direct taxes. Investigation using existing powers was no longer sufficient to allow the department to catch the controlling minds, and chief beneficiaries, of these attacks which included identity theft. The Review worked closely with the Home Office to include the extension of intrusive surveillance powers to direct taxes in the Serious Crime Act 2007. The extension came into force on 15 February 2008.

Penalties

- 6.10 The penalties strand of work is continuing. The purpose is to look at the effectiveness of the existing regimes, seek alignment, where it makes sense to do so, and modernisation in line with trends for civil penalties in the UK and elsewhere.
- 6.11 Analysis of incorrect return penalty regimes inherited by HMRC for CTSA, ITSA, PAYE, CIS, NIC and VAT suggested they were flawed in various ways and so did not meet the compliant taxpayer's expectations for a fair system:
- the penalties actually charged fell within a narrow band, which provided insufficient room to differentiate between different types of behaviour;
 - some of the terminology such as "negligence" was opaque to most taxpayers;
 - there was not one regime but three, which added to the lack of clarity for taxpayers about the rules and the potential outcomes. These could result in different penalty levels for different taxes in respect of the same behaviours;

- the regimes did too little to encourage a return to compliant behaviour.

6.12 The legislation in Finance Act 2007 created an aligned penalty regime for incorrect returns for the main taxes (CTSA, ITSA, PAYE, CIS, NIC and VAT) which:

- recognised that taxpayers needed to take reasonable care to make correct returns and claims, but that what was reasonable depended on the capacity of the individual taxpayer;
- made it clear that mistakes of whatever size should not be penalised if reasonable care had been taken;
- set maximum levels of penalty of 30% for failures to take reasonable care, 70% for deliberate understatement and 100% for deliberate understatement that had been concealed;
- discounted those figures very significantly in order to encourage unprompted and prompted disclosure;
- introduced the novel concept of suspended penalties for certain failures to take reasonable care that could make the penalty into an incentive to get it right in future; and
- ensured that high penalties would apply to cases of resolutely non-compliant behaviour without disclosure, thus creating a more powerful and visible deterrent.

6.13 The legislation in Finance Act 2008 took these changes further by:

- extending them to the other taxes and duties HMRC administers and including a narrow provision to charge penalties on third parties where there is serious non-compliance, for example in Inheritance Tax and in respect of excise warehouses; and
- developing the principles to cover failures to notify a new taxable activity where any penalty is now tied to actual tax loss but there are encouragements to return to compliance even after the tax is first due.

6.14 Consultations in June 2008 took forward work on penalties for failure to file returns or make payment on time, alongside related consultation on harmonisation of interest charged and paid. Responses to these consultations were largely positive with many constructive suggestions. These, together with external qualitative research, face to face consultation, better analysis of current penalties and the IT implications of any change, are all informing refined proposals. Were these to be implemented at some stage, the process would have to be phased over time, taking into account the wide ranging impacts for both taxpayers and HMRC.

6.15 In the light of the recent consultations current work is considering:

- for interest, a single rate for interest charged on late payment of all taxes and duties, linked to the Bank of England base rate, and another rate for over-payments, aiming to provide recompense and to be simple and fair;
- for prolonged or repeated late payment, penalties related to the amount unpaid one, six and twelve months after the due date;
- for late filing, a fixed sum penalty at the filing date (unrelated to the tax unpaid), the ability to charge small daily penalties (but restricted as to when and for how long) and moderate tax geared penalties (higher where the failure is deliberate) for prolonged delay (over 6 months). The aim is to reinforce the deadline and to deter prolonged delay;
- application of interest and late payment penalties to late paid in-year PAYE involving a modest change to employers' end of year returns.

6.16 There remain a number of other regulatory penalties which have not been covered by this work. These include a wide range of unrelated failures, usually specific to individual taxes. HMRC will be applying the design principles above to these penalties to see where improvements could be made. The aim would be to ensure clarity and consistency with the new penalty structures. Work has started on evaluating current law and practice.

Compliance checks

6.17 Compliance checking is an essential part of HMRC's role in administering tax in the UK. While some of this checking can be done informally, there need to be clear statutory powers for HMRC to gather information to check the right tax has been paid or claimed, and to act on it. Statutory powers make it clear what HMRC is allowed to ask for, how taxpayers can meet their obligations and the safeguards that are available to protect them. They act as a deterrent to those who may consider underpaying tax. They allow HMRC to detect those who are seeking to pay less than is due and make sure that errors are corrected.

6.18 Following the merger, HMRC faced administering a number of taxes whose information powers worked in different ways. This was particularly apparent for the taxes most commonly paid by businesses, namely income tax (including PAYE), capital gains tax, corporation tax, and VAT. Income Tax, CGT and CT had provisions based around officers issuing written notices asking for information, to be produced or returned to them. VAT and PAYE had provisions based around officers visiting taxpayers' premises and examining records. For PAYE, officers could only look at PAYE records, even where other information could be relevant and show incorrect deduction of income tax.

- 6.19 This presented two significant problems. First, the powers were a barrier to working across taxes. Some businesses were already asking HMRC to combine its checks, in particular to look at VAT and CT or IT in one go rather than separately. But the different powers and approaches prevented this. Secondly, they meant that the approach HMRC officers took, having identified a risk of non-compliance, was based on which tax they worked with, rather than what the risk was and what was appropriate for the particular taxpayer.
- 6.20 Changes in Finance Act 2008 created a framework of aligned powers to check taxpayers' affairs across IT (including PAYE), CGT, CT, and VAT. The previous checking powers are to be repealed and replaced with aligned powers to:
- inspect statutory records and business premises and assets;
 - seek information from taxpayers through a written notice; and
 - seek information from third parties through a written notice.
- 6.21 Importantly, safeguards for taxpayers were also aligned, including:
- a right of appeal or a requirement for external authorisation when asking for information beyond statutory records;
 - a requirement that visits can only take place with 7 days' notice unless approved by an authorised officer;
 - clarity that private dwellings can only be entered by agreement or with a court order; and
 - shorter time limits within which HMRC can correct mistakes for direct tax.
- 6.22 Finance Act 2008 also aligned rules for keeping records and retained powers to obtain bulk data about a class of unnamed taxpayers in cases where serious loss of tax is suspected. Finance Act 2008 includes VAT within the scope of this power.

Future work on compliance checking powers

- 6.23 There are still a number of information and inspection powers which remain to be considered. These include powers:
- to check the tax position of taxpayers liable to other taxes such as insurance premium tax; excise; environmental taxes (landfill tax; climate change levy and aggregates levy); stamp duty land tax; stamp duty reserve tax; inheritance tax; and petroleum revenue tax;
 - specially designed to deal with a specific situations or to gather information from closely connected parties, whose obligations

affect other taxpayers. An example of the latter are insurance brokers who charge insurance premium tax and who make returns to insurance companies who pay that tax;

- to obtain information about parties whose identities may not otherwise be known to HMRC. An example is HMRC's power to ask for a return of persons in receipt of taxable income belonging to others;
- to obtain bulk information for risk analysis. An example is HMRC's power to ask for information from financial institutions about interest paid on bank accounts.

Other taxes

6.24 The creation of an aligned checking framework in Finance Act 2008 concentrated on IT (including PAYE), CGT, CT and VAT because these are the areas with the greatest potential for HMRC to work across taxes, and so reduce costs to both taxpayers and HMRC. Nonetheless, the potential benefits from alignment also apply to other taxes administered by HMRC.

Specific information powers

6.25 HMRC will also want to seek views about the first tranche of possible repeals of a number of specialist information and inspection powers. This would make sure that the safeguards in the new checking framework apply in these cases. It would also simplify HMRC's checks by reducing the number of powers that could be used.

Unnamed Parties Powers

6.26 A significant number of specific information powers allow HMRC to require information about unidentified taxpayers as well as to check the tax position of known taxpayers. These powers cannot be accommodated within the new framework as it stands, as use of the unknown taxpayer power is limited to cases where it can be demonstrated that there is risk that the assessment or collection of tax is seriously prejudiced. HMRC is not proposing major changes to Schedule 36 to meet these cases, but will instead consider them alongside a review of other powers which enable HMRC to call for bulk information. It is hoped that this work will in due course lead to the proposed repeal of further specialist provisions.

Bulk Information Powers

6.27 HMRC is in the early stages of work on bulk risk information powers. Risk information is essential for HMRC's effective compliance checking. The Department uses a range of data from different sources to provide an indication of whether there is a risk that the right amount of tax may not have been paid. This can be used to target publicity or

to support some form of intervention and helps to make sure that the check to be carried out will be proportionate to the risk, ranging from a quick phone call to an in-depth investigation.

- 6.28 A careful balance is needed where HMRC uses statutory powers to gather information for risk assessment. On the one hand there is a regulatory burden for the body asked to provide the information. On the other, proportionate use of these powers means that compliance checking is better targeted. That should result in fewer compliant taxpayers having their tax affairs checked in detail while those who do not pay what they should stand a greater chance of being found out.

Payment, repayment and debt

- 6.29 HMRC has a statutory duty to collect money on behalf of the Crown, which Government needs to fund its programme of reforms and the delivery of public services. In discharging this duty, HMRC aims to understand its customers better to help it support those who wish to comply. This approach needs to be balanced by the need to be fair to all taxpayers by pursuing those who will not pay on time.
- 6.30 The Department has begun a programme of legislative, administrative and operational changes designed to help taxpayers to pay what they owe on time, support those who find themselves in temporary difficulties, and come down hard on those who seek to avoid their obligations by paying late or not at all.
- 6.31 HMRC published a high level consultation in June 2007 on a balanced package of proposals. Following further consultation in January 2008, three of these proposals were enacted in Finance Act 2008. These were to:
- align and modernise HMRC powers to seize and sell goods to satisfy tax debt and to take action for debt in the courts;
 - allow HMRC to set repayments it must make against what it is owed more often than now; and
 - enable HMRC to accept payment by credit card and pass on the associated transaction fee.
- 6.32 HMRC have developed the remaining measures with a view to further consultation. These are:
- payment Instalment Schemes for income tax and corporation tax to allow taxpayers to pay in a more flexible way;
 - allowing HMRC to recoup its costs when it successfully obtains judgment for tax debt in the civil courts;
 - third party information powers to help trace debtors with whom HMRC has lost contact;

- making greater use of some form of financial security by extending their use from indirect taxes to other direct taxes; and
- collecting small debts through Pay As You Earn.

HMRC Charter

6.33 Respondents to the Review's consultations have consistently called for a Charter for HMRC's customers. In January of this year the then Financial Secretary asked HMRC to begin work with stakeholders on the preparation of a Charter. Since then HMRC has undertaken a very extensive consultation exercise with customers and HMRC's own staff. This has involved formal consultation, workshops, focus groups, face to face meetings and research and has been strongly supported by stakeholders. Further consultation early in the New Year will consider the wording of the Charter. The current expectation is that the document will be launched in the first half of 2009. A summary of responses to the consultation which ended on 11 September will be added shortly on the consultations section of the HMRC website.

Chapter 7: Implementation

- 7.1 Getting the legislation right is crucial, but equally so are the steps HMRC will take to ensure that the new powers, deterrents and safeguards are implemented effectively and deliver real change. The Government has announced to-day an Implementation Oversight Forum that will be made up from external stakeholders and relevant HMRC directors and will report to ministers. It is envisaged that this forum will start work before the first of the new civil powers come into effect on 1 April 2009.
- 7.2 HMRC's **criminal investigation** directorate set up a learning and development programme to implement the changes enacted in Finance Act 2007 and The Serious Crime Act 2007. The changes mainly impacted former Inland Revenue investigators, who had to be trained through a convergence programme. The programme which is running through 2007/08 and 2008/09 will absorb the equivalent of over sixty staff years. It includes, for students and trainers, preparation time and attendance at face to face training events plus reinforcement of the messages by managers, training officers and mentors once the training has occurred. Additional seminars were given to other staff to make them aware of the changes. Inevitably this commitment will have had an impact on operational activity but HMRC see it as a valuable investment.
- 7.3 Implementation of the **penalties for incorrect returns** began last year. Technical guidance was worked up with external stakeholders and was published internally and on HMRC's Internet on 1 April 2008. This was followed a month later by publication of an internally developed e-learning awareness package. Commentators have commended HMRC on this and strongly recommended it to tax agents. A final tranche of guidance, operational instructions to staff, is due to be published before the first penalties can be charged in April 2009. In addition HMRC has delivered the message on what "reasonable care" means and answered questions at numerous tax conferences including 24 events for smaller firms of accountants. The feedback has been positive.
- 7.4 A comprehensive learning package for HMRC staff is nearing completion and will be delivered in early 2009. This will also identify modules that can form the basis of joint accountancy profession/HMRC learning events, opportunities for which are being actively explored.
- 7.5 An IT enabled case management system is being developed to record details of new penalties. Monitoring of this data will help ensure consistent application of the new legislation throughout HMRC and across tax regimes.
- 7.6 Considerable further work is being undertaken to raise awareness of new penalties among all our customers. Advertising campaigns have

already highlighted the message that if taxpayers take reasonable care to get their tax returns right they will not be penalised for mistakes. Awareness raising and communication of the changes for unrepresented and individual customer groups will begin nearer to the April 2009 go-live date.

- 7.7 This strand of activity is being extended to embrace the penalties for incorrect returns for other taxes and duties and for failure to notify a new taxable activity enacted in Finance Act 2008. Draft technical guidance is already being circulated externally for comment.
- 7.8 A separate team has been set up to deliver the **compliance checks legislation** in Finance Act 2008. Work on the technical guidance is underway and some has already been exposed externally. Work on operational guidance and training has also started. To make certain that HMRC has a coherent and comprehensive approach to the changes brought about by the new powers this is being developed hand in hand with the separate activities that are leading to new ways of working. HMRC envisages completion of external consultation on the Technical guidance by the end of the year, with operational guidance following shortly afterwards. Safeguards and rules about when certain powers will be invoked will be built into the operational guidance. The aim is to ensure that the use of a power is proportionate to the risk involved. The operational guidance will promote this on a case by case basis.
- 7.9 To promote awareness, the project leader and members of the policy team are attending Working Together events (where local tax advisers and HMRC staff get together to discuss issues) and other external forums throughout the autumn. A learning needs analysis is being conducted to assess the impact of the new legislation and the requirements for content, format and users of the training package. The plan is to commence training from January 2009 onwards. To avoid concerns about excessive changes, combined communications, learning and guidance are being delivered, wherever possible, for both the new penalties and the compliance checks.
- 7.10 To successfully implement the changes flowing from the Review some attitudes need to change, not least within HMRC. That is a key outcome which the Review has been seeking from day one. So, for instance, guidance to staff already makes it clear that they should not spend long on borderline issues. Understanding behaviour is not a black and white issue. People do make mistakes. Tax can be complicated. Different taxpayers have different capacities to understand the tax system – HMRC must recognise that in the way it communicates with them and, for instance, in how it determines what is reasonable for any particular taxpayer.

- 7.11 Delivering a customer focussed approach to compliance requires a behavioural shift within HMRC and an understanding from staff about what customer focus means in the compliance context and what is expected from them. It means, for example, always adopting a risk based approach to compliance checking.
- 7.12 To help embed this approach HMRC has developed an interactive workshop which explores the concept of customer focus and gets HMRC staff to think about the intervention process from a customer perspective. This involves giving Revenue officers greater understanding of what it feels like to be subject to a compliance check. The session also explains how developing customer focus will help HMRC deliver its strategic objectives: bringing in additional revenue from the non-compliant whilst reducing burdens for those who do comply. HMRC has the capacity to deliver these events to a large proportion of its compliance staff during 2008-09.
- 7.13 Most of HMRC's staff do understand the constraints on taxpayers and businesses and already welcome the greater flexibility in the way that checks can be conducted. For direct taxes, for example, there is a real opportunity in implementing the compliance checks legislation to do what all parties have failed to achieve since the introduction of Self Assessment: radical reduction of the times taken to check someone's tax. For straightforward cases the aim should be weeks, maybe days; certainly not months, let alone years.

Chapter 8: Summary of completed, current and future work

This summary lists completed legislation and current and future work designed to enact and implement legislative changes. The timetable for current and future work is a matter for Ministers and cannot be specified at this time. However, the table does attempt to give some idea of the order in which work might be undertaken.

Completed work	
Work area	Purpose
Alignment of criminal investigation powers in 2007	Effective criminal investigation reassures taxpayers the system is fair and deters those who would otherwise not comply
Intrusive surveillance powers extended to direct taxes (Serious Crime Act)	Effective powers to investigate serious organised crime protect both the Exchequer and citizens whose identities might be stolen
Aligned and modernised penalties for incorrect tax returns (VAT, CT, ITSA, PAYE, NIC) Start date: 6 April 2009	Effective penalty regime reassures the compliant, incentivises a return to compliance and deters and penalises tax evasion
Comprehensive consultation on safeguards in non-tax legislation and HMRC guidance and practice	Provided awareness of safeguards in non-tax legislation such as HRA, DPA, FOI, etc and in terms of HMRC operation of tax law and practice
Aligned and modernised information powers, record keeping requirements and time limits (IT,CT,CGT,VAT,PAYE)	Supports those who make mistakes and helps them to get it right in future, ensures activity to check tax returns is visible, effective powers are used proportionately to risk with effective safeguards
Aligned and modernised penalties for incorrect tax returns for other HMRC responsibilities (excl Tax Credits)	Effective penalty regime reassures the compliant, incentivises a return to compliance and deters and penalises tax evasion
Aligned and modernised penalties for failure to notify taxable activities	Effective penalty regime reassures the compliant, incentivises a return to compliance and deters and penalises tax evasion and failures to comply with obligations
Ability to pay tax by credit card, aligned powers to take court proceedings and ability for HMRC to set off repayments against debts	Makes it easier for people to get their tax right and pay on time and ensures tax and, where appropriate interest and penalties, is collected

Current and future work	
Work area	Purpose
Application of FA2008 compliance checks legislation to other taxes and duties including removal of information powers that are no longer needed following modernisation and alignment	Supports those who make mistakes and helps them to get it right in future, ensures activity to check tax returns is visible, effective powers are used proportionately to risk with effective safeguards and introduces clearer legislation
Modernisation and alignment of HMRC's regimes for encouraging timely filing and payment	Reassure those who believe they should do their best to pay the right tax at the right time that the system is fair and provides effective deterrents and sanctions
An aligned approach to charging and paying interest across HMRC's responsibilities (not strictly within the Review but worked in collaboration with the review team)	Reassure those who believe they should do their best to pay the right tax at the right time that the system is fair, simple to understand and provides recompense when tax is paid at the wrong time
Changes to allow income tax and corporation tax payers to manage their cashflow and budget for tax and a range of measures to allow HMRC to collect what is owed	Make it easier for people to get their tax right and pay on time and ensure tax and, where appropriate interest and penalties, is collected
Modernisation of "bulk" information powers that require the same information about large numbers of taxpayers	Provides information to ensure risk assessment targets more detailed checking on areas of highest risk
Aligned and modernised penalties for regulatory failures	Effective penalty regime reassures the compliant and deters and penalises failures to comply with statutory obligations
Modernisation and alignment of various Excise generic registration and approval systems; extension of compliance checks framework where it makes sense to do so	Supports those who make mistakes and helps them to get it right in future, ensures activity to check tax returns is visible, effective powers are used proportionately to risk with effective safeguards and makes it easier for people to get their tax right and pay on time
Consideration of whether changes are needed to tax credits in the light of the Review's work on other areas of HMRC's responsibilities	Supports those who make mistakes and helps them to get it right in future, ensures activity to check claims is visible, effective powers are used proportionately to risk with effective safeguards
Work to create a Charter for HMRC and its customers	The Review works closely with the team who are undertaking this linked but separate and broader piece of work